

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 29-01-2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

TAX CASE (Appeal) Nos.139,140 & 141 OF 2003

Sri M.S.Srinivasa Naicker ... Appellant in T.C.No.139/2003

Smt.Engammal ... Appellant in T.C.No.140/2003

Smt.Achammal ... Appellant in T.C.No.141/2003

-vs-

The Income Tax Officer,
Ward I (3),
Madurai.

... Respondent in all appeals

Appeals against the order of Income Tax Appellate Tribunal, Madras "C" Bench, dated 09.06.2003, in ITA Nos.600/Mds/98, 64/Mds/2003 and 63/Mds/2003 respectively against the order of the Commissioner of Income tax (Appeals) VII, (Appeals I), (Appeals-II), Madurai respectively in PAN/G1: 47-018-HT-8926, PAN/GIR No. E-7009, PAN/GIR.NO.A-7044 respectively, dt. 13.2.1998, 13.12.2002, 13.12.2002 respectively against the order of the Income tax officer (Ward-I) 3, Madurai respectively in order dt. 20.3.96, 23.3.2001 and 23.3.2001 respectively.

For appellants : Mr.R.Vijayaraghavan

For respondents : Mr.J.Narayanasami,
Jr.Standing Counsel.

COMMON JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

These appeals are filed at the instance of the assesseees.

2. The question of law raised in T.C.Nos.139 to 141 of 2003 is as follows:

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the lands are not agricultural

lands and hence profit on sale of the lands is assessable as capital gains ?

As regards T.C.No.139 of 2003, one more question is raised viz.,

" Whether on the facts and in the circumstances of the case, the Tribunal was right in partly confirming the addition to gross profits ?"

3. These appeals relate to the three different assessments for the Assessment Year 1993-1994. They pertain to the relief from liability on the capital gains in respect of the three different assessees in respect of the same property, wherein, they enjoyed undivided shares. The assessee contended that the property in question, which is the subject matter of sale, was an agricultural property and hence, it could not be subjected to any liability under the provisions of capital gains.

4. In his reply before the officer, the assessee claimed that the land in question was situated within 4 ½ kms. in the limits of Tirumangalam Municipality. The Adangal Register showed that the land was an agricultural land, wherein the assessee carried on agricultural operations till the date of the sale. The assessee further took the plea that the fact that the purchaser had applied for approval for conversion as industrial plot did not have any bearing in the matter of consideration of its character as an agricultural land. Consequently, the assessee submitted that the liability to capital gains tax was not attracted.

5. On enquiry in the District Industries Centre, Madurai, the Assessing Authority learnt that the purchaser society had written to the Madurai Local Planning Authority, seeking information as regards the situation of the land; that the Municipality replied that the area was declared as an industrial area as per Madurai Master Plan for land utility. It was also learnt from the Deputy Director, Town & Country Planning, Madurai, that the Government of Tamil Nadu in G.O.Ms.No.838, Housing and Urban Development, dated 03.07.1980, had given their consent to the Madurai Local Planning Authority to the publication of a notice of the preparation of Master Plan for Madurai, which included the said lands under industrial area. It is also stated that in the records of Sub-Registrar's Office, Tirumangalam, the lands have been marked as industrial area.

6. With the above said facts in the background, the Assessing Authority viewed that the lands in question were not possessing the character of agricultural lands. However, he noted the facts in favour of the assessee that the lands were registered as agricultural lands, land revenue was paid; that there was no evidence that the lands in question were not put to any other purposes other than agriculture and that there was, in fact, cultivation till the date of sale. However, the Assessment Officer rejected the claim of

the assessee that the lands in question were agricultural only based purely on the intention of the intending purchasers that the assessee was liable to pay tax on the gains on the sale of these lands. In the course of his order, the Officer also noted that there was no doubt that the lands in question were situated outside the notified area. Yet, considering the fact that the purchaser, namely, Madurai Automobile Co-operative Industrial Estate Limited had purchased the same for non-agricultural purpose at Rs.1,500/- per cent, the land had lost its agricultural character. The Assessing Authority also noted that the assessee was a member in the purchaser's institution. Consequently, the Authority confirmed the assessment.

7. On appeal, the Commissioner of Income-Tax noted that the Assessment Officer had agreed that there was claim that the lands fell outside the notified area. However, the character of the land had to be determined in accordance with the provisions under Section 2 (14) (iii) (a & b), as it then stood. The Appellate Authority also found, as a matter of fact, that the Assessing Authority never stated that the land in question was not used for agricultural purposes. The Appellate Authority also pointed out that the Assessment Officer noted that the land was going to be put for non-agricultural purposes by the purchaser and that the assessee was a member of the Purchasers' Association. Considering this and the recitals in the agreement which were known to the appellant and as per the decision of the Supreme Court in *Sarifabibi Mohmed Ibrahim v. Commissioner of Income-Tax*, reported in (1993) 204 ITR 631, the land has to be held as an agricultural land at the time of transfer, yet, going by the purpose of its transfer, essentially, the land was non-agricultural in character. Consequently, the Appellate Authority sustained the order of the AO and, thus, dismissed the appeal.

8. On further appeal, referring to the provisions contained in Section 2 (14) (iii), the Tribunal held that applying the provisions of law and on the factual aspects, it was clear that the land in question was not agricultural land. Hence, it confirmed the view of the authorities below. Aggrieved by the same, the assessee has come on appeal before this Court.

9. Apart from the common issue in all the appeals, with regard to yet another issue, namely, Addition towards Gross Profits in T.C.No.139 of 2003, the Tribunal held that the addition was made towards gross profits, on the ground that the profit margin adopted by the assessee for a high quality of kapas was much lower in point of return, compared to what had been returned on lesser quality of kapas.

10. Under the circumstances, the Tribunal rejected the claim of the assessee, on the question of gross profit addition too. Hence, the assessee has come on appeal in T.C.No.139 of 2003. As far as this question is concerned, considering the factual finding of the Tribunal and in the absence of any material to substantiate the claim of the assessee that the addition of gross profit was not supported by

any material, we do not find any ground to interfere with the order of the Tribunal. Consequently, the appeal on this ground stands rejected.

11. On the question of treatment given to the lands as non-agricultural lands, it is an admitted case that till the date of sale, agricultural operations were carried on by the assessee. The land was put to use only for agricultural purposes and not for anything else. The lands in question were also registered as agricultural lands and assessed to land revenue. Consequently, learned counsel for the assessee submits that going by the decision of the Supreme Court in *Sarifabibi Mohmed Ibrahim v. Commissioner of Income-Tax*, reported in (1993) 204 ITR 631, the assessment could not be sustained. He further placed reliance on the decision of the Gujarat High Court in *Commissioner of Income-Tax, Gujarat-I, v. Smt.Lilavati Thakorelai Patel*, reported in (1985) 152 ITR 565, that the purposes to which the purchase of lands was put subsequent to the sale has no relevance as regards the character of the land at the hands of the vendor as on the date of sale. Consequently, the fact that the purchaser has put it for a totally different purpose from that of the assessee ought not to have weighed with the Tax Authority in the matter of denying the relief.

12. Learned counsel for the assessee has also placed reliance on the decision of this Court in *Commissioner of Wealth-Tax v. E.Udayakumar*, reported in (2006) 284 ITR 511 (Mad), at p.514, wherein it is held that the purpose of the purchase by the vendee is totally an irrelevant consideration for the purpose of the application of the provisions relating to capital gains.

13. Referring to the decision in *Commissioner of Income-Tax v. P.J.Thomas*, reported in (1995) 211 ITR 897, considering the provisions of Section 2(14), learned counsel for the appellants submits that the authorities below ought to have taken note of the relevant facts to draw an inference that the land in question was an agricultural land. Learned counsel for the assessee referred to the decision of the Supreme Court in *Sarifabibi Mohmed Ibrahim v. Commissioner of Income-Tax* reported in (1993) 204 ITR 631, to contrast the facts and submitted that the facts prevailing in the decision reported in (1993) 204 ITR 631 (*Sarifabibi Mohmed Ibrahim v. Commissioner of Income-Tax*) that on the date of sale, the land was no longer agricultural land, since the assessee had obtained permission to convert the said land to non-agricultural purpose; that the appellant had no intention to bring it into cultivation at any time after getting permission. The admitted factual position in the case on hand was that on the date of sale, the assessee had in fact put the property for agricultural operations. Consequently, the distinction in the factual situation makes all the difference, justifying the plea of the assessee for exclusion of the lands for assessability to capital gains from taxation.

14. Learned Junior Standing Counsel appearing for the revenue, however, drew support from the decision of the Supreme Court in (1993) 204 ITR 631 (Sarifabibi Mohmed Ibrahim v. Commissioner of Income-Tax), and submitted that considering the fact that as on the date of sale the assessee had knowledge that the purchaser was going to put the lands in question to use different from what the assessee had been using for; that it was a clear indication that the land in question was no longer an agricultural land. In the circumstances, he submitted that the Tribunal was justified in its view that the lands in question are no longer retained in its character as agricultural land and hence capital assets attract a heavy tax under the provisions of Section 45.

15. We have gone through the orders passed by the authorities below, confirming the assessment on the capital gains, arising out of the sale of the lands.

16. The contention of the appellants herein merits acceptance by this Court. It is an admitted fact that till the assessee sold the lands, agricultural operations, in fact, were carried out by the assessee. The Assessing Authority, in its order, in paragraph 11, states that the land was actually under cultivation till the date of sale.

17. A perusal of Section 45 shows that the requirement as on the date of sale of transfer is that the asset must be capital asset, considering the description under the Act. The chargeability to tax under Section 45 arises only if on the date of sale, the lands in question retained its character as a capital asset, which means, an asset, which does not answer the definition of a capital asset and which is an agricultural land falling within the definition of Section 2 (11) would automatically be outside the scope of Section 45.

18. In the decision in M.Venkatesan v. Commissioner of Income-Tax (Mad.), reported in (1983) 144 ITR 886, this Court, referring to the scope of Section 45, held that "taxation or exemption from taxation depends upon the subject of transfer answering or not answering the definition of capital asset at the time of transfer and at no other point of time." In the subsequent decisions reported in (1995) 211 ITR 897 (Commissioner of Income-Tax v. P.J.Thomas) and (2006) 284 ITR 511 (Commissioner of Wealth-Tax v. E.Udayakumar), it was held that the subsequent treatment has no relevance in the matter of considering a capital asset. It is no doubt true that the purpose for which the purchaser had purchased was totally different from what the transferor had intended to use the lands in question but as held in the decisions cited above, with the admitted finding that the lands in question were under agricultural operation on the date of sale for the purpose of considering the meaning of capital assets, it matters very little how the subsequent purchaser intended the land in question to be put to use.

19. In the circumstances, going by the law declared by this Court and the Supreme Court on the admitted facts, we do not find any reason to accept the plea of the respondents/revenue that the asset in question is a capital asset and it attracts levy of capital gains tax, it having shed its character as an agricultural land on the sale effected.

20. In the decision reported in (2006) 284 ITR 511, this Court held that the fact that the land is located in a commercial area or the land having been partially used for non-agricultural purposes or that the vendee also had purchased it for non-commercial purposes were totally irrelevant consideration for the purpose of application of Section 54-B. In the course of the decision reported in (2006) 284 ITR 511, the Division Bench of this Court referred to the decision in CIT v. Smt.Savita Rani, (2004) 270 ITR 40, wherein under similar circumstances it held that the vendee's use is not of relevant consideration for the purpose of application of Section 54-B.

21. Going by the above decisions and on an examination of the facts here, as admitted by the revenue that as on the date of sale, the agricultural operations were in fact carried on in the lands, it is difficult to accept the view of the Tribunal, considering the law was to proceed from the point of how the purchaser had intended to use. It is not disputed by the revenue that the land in question does not fall within the restricted clause to make it as a capital asset for purposes of levy under Section 45.

22. As noticed already, the decision of the Supreme Court rests on facts, which are totally different from the one prevailing here. Instead of assisting the Revenue, it does favour the assessee that in the absence of any contra indication that the assessee was using it or intending to use it for non-agricultural purposes, it is difficult to accept the stand of the Department.

23. Consequently, T.C.No.139 of 2003 is partly allowed and the first question is in favour of the assessee and the second one is held against the assessee. As regards T.C.Nos.140 and 141 of 2003, the appeals are allowed. No costs. Consequently, the connected T.C.M.P.Nos.99 to 101 of 2004 are closed.

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Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1. The Income Tax Officer,
Ward I (3),
Madurai.

2. The Income Tax Appellate Tribunal,
'C' Bench, Chennai.

3. The Commissioner of Income tax (Appeals) VII, I, II
Madurai.

4. The Assistant Registrar,
Income Tax Appellate Tribunal,
Rajaji Bhavan, Besant Nagar,
Chennai.

5. The Income-tax Officer,
(Ward I)3, Madurai.

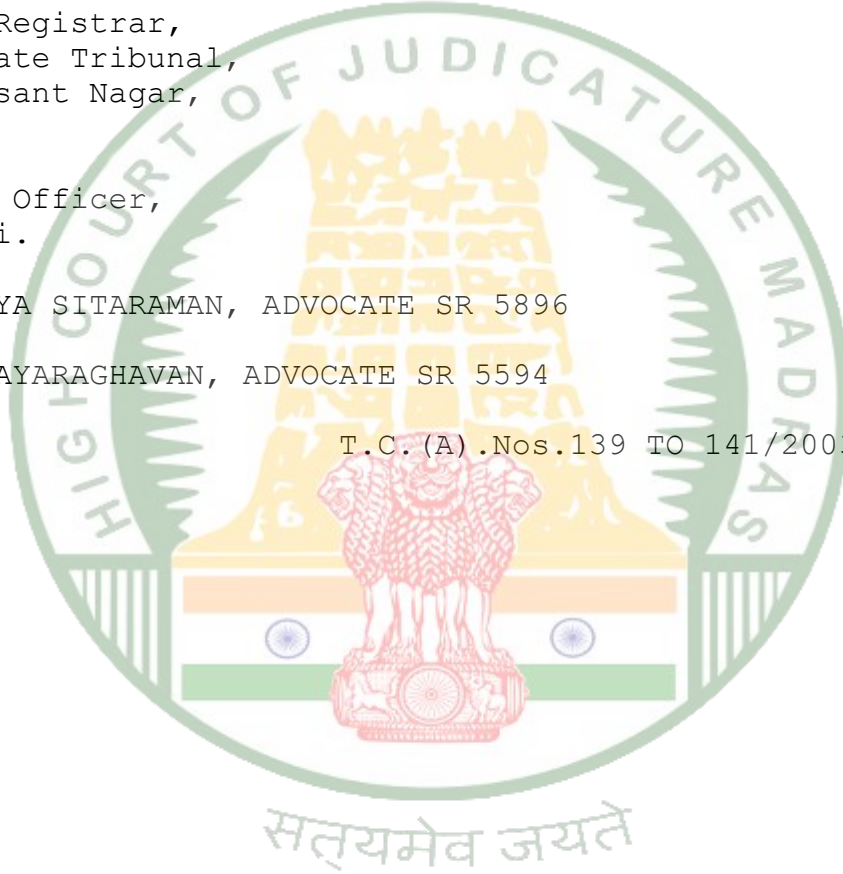
1 CC TO MRS. PUSHYA SITARAMAN, ADVOCATE SR 5896

1 CC TO MR.R. VIJAYARAGHAVAN, ADVOCATE SR 5594

T.C.(A) .Nos.139 TO 141/2003

JSK (CO)

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